

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

JOSÉ A. CRUZ-KERKADO, *ET AL*

Plaintiffs

v.

COMMONWEALTH OF PUERTO RICO (BY  
WAY OF THE PUERTO RICO DEPARTMENT  
OF JUSTICE a/k/a DEPARTAMENTO DE  
JUSTICIA, *ET AL*

Defendants

CIVIL NO. 16-2748 (ADC)

**MOTION TO STRIKE PLAINTIFFS’**  
**“MOTION FOR DECLARATORY JUDGMENT” (DOCKET NO. 35)**

1. Plaintiffs have, once again, failed to abide by the Local Rules in this District. *See* Court Order, Docket No. 27.
2. On January 20, 2017, Plaintiffs filed a “Motion for Declaratory Judgment.” (Docket No. 35).
3. A glance at the substance of the so-called “Motion for Declaratory Judgment” shows, however, that the motion is but a Surreply to the PRSA’s Reply Brief regarding its Motion to Dismiss (Docket No. 34), as Plaintiffs attempt to refute the arguments made in that brief and ultimately request that the Court “deny defendants’ dispositive motions,” (Docket No. 35, p. 6), *e.g.*, the PRSA’s motion to dismiss.
4. Local Rule 7(c) states that the filing of a reply memorandum (which includes surreplies) requires a party to seek leave from the Court. Plaintiffs have not done so.
5. Plaintiffs also needlessly request declaratory judgment relief, a remedy that has already been included in their Amended Complaint. (Docket No. 29). *See Int’l Bhd. of Teamsters v. E. Conference of Teamsters*, 160 F.R.D. 452, 456 (S.D.N.Y. 1995) (“Because an action for a declaratory

judgment is an ordinary civil action, a party may not make a *motion* for declaratory relief, but rather, the party must bring an *action* for a declaratory judgment.”) (emphasis in original).

6. This type of motion is inconsistent with the Federal Rules of Civil Procedure. *Id.* (“Insofar as plaintiffs seek a motion for a declaratory judgment, plaintiffs’ motion is denied because such a motion is inconsistent with the Federal Rules.”).

7. The only way Plaintiffs’ motion could be consistent with the Federal Rules would be “to construe it as a motion for summary judgment on an action for a declaratory judgment.” *See id.*; *see also Jenkins Starr, LLC v. Cont’l Ins. Co.*, 601 F. Supp. 2d 344, 346 (D. Mass. 2009) (treating Plaintiffs’ “Motion for Declaratory Judgment” as a motion for summary judgment)

8. Plaintiffs’ motion, however, does not comply with the Fed. R. Civ. P. 56 or Local Rule 56(b) requirements regarding the statement of uncontested facts that must accompany a motion for summary judgment.

9. Therefore, at this stage and in light of the pending motions to dismiss, Plaintiffs’ motion is wholly improper.

**WHEREFORE**, defendant PRSA requests that the Court strike Plaintiffs’ Motion for Declaratory Judgment.

RESPECTFULLY SUBMITTED.

**I hereby certify** that today I have electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all attorneys of record.

In San Juan, Puerto Rico, this 20<sup>TH</sup> day of January, 2017.

**MORELL, BAUZÁ,  
CARTAGENA & DAPENA**  
PO Box 13399  
San Juan, PR 00908  
Tel. 787-723-1233  
Fax. 787-723-8763

/s/ German J. Brau  
German J. Brau  
USDC PR No. 202805  
Email: [german.brau@mbcdlaw.com](mailto:german.brau@mbcdlaw.com)

/s/ Ramón E. Dapena

Ramón E. Dapena

USDC PR No. 125005

Email: [ramon.dapena@mbcdlaw.com](mailto:ramon.dapena@mbcdlaw.com)

/s/ Iván J. Llado

Iván J. Llado

USDC PR No. 302002

Email: [ivan.llado@mbcdlaw.com](mailto:ivan.llado@mbcdlaw.com)

*Counsel for Defendant Puerto Rico Shooting  
Association a/k/a Federación de Tiro de Armas  
Cortas y Rifles de Puerto Rico*